IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 453 of 2002
with
CRIMINAL REVISION APPLICATION No. 454 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT ELECTRICITY BOARD THRO'DY.EXECUTIVE ENG.(O&M) - Applicant(s)
Versus
MAHIPATSINH SOMSINH GOHIL - Respondent(s)

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Appearance :
MR PREMAL R JOSHI for Applicant(s) : 1,
MR ASHWIN V BHATT for Respondent(s) : 1,
MR.H.L. JANI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 06/12/2006

ORAL JUDGMENT

Gujarat Electricity Board (as it then was) is the applicant before this Court. It is the original complainant. The applicant in Criminal Revision Application No.453 of 2002 has filed F.I.R. Which was registered as C.R. No.92 of 1993, which has resulted into Criminal Case No.630 of 1994, which is decided by the learned Judicial Magistrate, First Class, Mangrol, District Surat, by his judgement and order dated 11.01.2002. The learned Judicial Magistrate, First Class, Mangrol, District Surat passed order under section 248(1) of the Code of Criminal Procedure and acquitted the accused giving them benefit of doubt for the offence under sec.39 of the Indian Electricity Act, 1910.

2. In the other case, i.e. Criminal Revision Application No.454 of 2002, Gujarat Electricity Board (as it then was) is the applicant. It is the original complainant. It had filed an F.I.R. on 10.12.1993 being C.R. No.91 of 1993, which was registered as Criminal Case No.608 of 1994 by the learned Judicial Magistrate, First Class, Mangrol, District Surat. The same was decided by the learned

Judicial Magistrate, First Class, Mangrol, District Surat by judgment and order dated 11.01.2002. The learned Judicial Magistrate, First Class, Mangrol, District Surat passed order under sec.248(1) of the Code of Criminal Procedure acquitting the accused under sec.39 of the Indian Electricity Act giving benefit of doubt. In both these matters, heard learned advocate Mr.Premal Joshi for the applicants, Mr.Ashwin V Bhatt for respondent no.1 and learned APP, Mr.Jani for respective no.2.

3. Learned advocate for the complainant placed reliance on a decision of this Court in the matter of **State of Gujarat Vs. Bhemji Ranchodji Patala Thakore**, reported in 1999 (2) GLR 1767. The learned advocate relied upon the observations made by the High Court in para 13, which read as under:

> "The trial court has seriously erred in rejecting the evidence only on the ground that Panchas have not supported. The trial court ought to have taken into consideration admitted signatures on the panchnama. One of the panch has taken photographs of the line which are produced on record and that

> clearly shows that the panch was present. He has taken the photographs of the installation of the accused. It is to be presumed in view of sec.39, that until contrary is proved abstraction, consumption or use of energy has been dishonestly caused by such consumer. Accused has admitted in his statement that it was his electrical installation and prosecution evidence clearly reveals that by passing the meter, electricity was being abstracted from the overhead supply line of the Board by an unauthorised wire connecting the main with the private terminal of the accused. In view of this, the prosecution has discharged its duty in proving the case and the accused has failed in discharging his burden. In the circumstances, the impugned judgement and order passed by the trial court is quashed and set aside. The accused is held guilty of an offence punishable under sec.39 of the Electricity Act." (emphasis supplied)

From the aforesaid decision it is clear that even in absence of 'corroborating/ supporting' evidence of Panch, relying upon the evidence of the officers, accused can be convicted. That being so, only because the Panch has turned hostile, it is not

necessary to acquit the accused.

4. Mr.Ashwin V. Bhatt, learned advocate submitted that in the present case, learned advocate for the accused could not cross examine the complainant. Right to cross examination is a valuable right. It is a matter of record that the accused could not avail his valuable right of cross-examining the complainant, but then the same can be taken care of by asking the learned Judicial Magistrate, First Class, Mangrol, District Surat to see that after the remand the matter is proceeded in accordance with law and the accused is given an opportunity to exercise the right of cross examining.

5. Taking into consideration the aforesaid discussion, these Revision Applications are allowed. The judgement and order passed by the learned Judicial Magistrate, First Class, Mangrol, District Surat is hereby quashed and set aside. Rule is made absolute.

The matter is remanded to the learned Judicial

Magistrate, First Class, Mangrol, District Surat to proceed with the matters in accordance with law complying with all the procedural requirements, like cross examination of the complainant and other witnesses examined in support of the case of the prosecution which should be made available to the accused for cross examination.

6. Taking into consideration the fact that the matters are old enough, the learned Judicial Magistrate, First Class, Mangrol, District Surat is directed to give priority to the matters and decide the same on or before 30.04.2007.

Learned advocates appearing at the trial for the complainant and the accused shall extend full cooperation to the learned Judicial Magistrate, First Class, Mangrol, District Surat to see that the aforesaid directions are complied with.

(RAVI R. TRIPATHI, J.)

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